When Consulting a Lawyer is a Good Idea

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Rules for both small and large turbines vary widely

- Rules for both small and large turbines vary widely from state to state, county to county, and even neighborhood to neighborhood.
- Subject to many siting considerations and permit requirements, depending on their size and location.
- Small Turbines
  - Single small residential turbine on a farm may be subject to minimal environmental/neighbor concerns, zoning requirements, and permits
  - Same turbine on a large lot in a developed residential neighborhood would have "good neighbor" issues even if no formal requirements
- Large Turbines
  - My focus today
  - State and federal approvals related to siting

Large or small, wind energy projects need the same things

Large or small, wind energy projects need the same things in order to be successful:

- A Good wind resource
- A Good site
- An accepting community
- And circumstances that cause the economics of the project make sense

Issues to be considered:

- Land
- Aesthetics
- Property Values
- Noise
- Public Safety
  Loss Prevention
- Biological Resource Impacts
- Construction
- Land Use
- Dismantling and Restoration
- Taxation
- Zoning

Must Acquire Rights to Land – Wind Energy Lease Agreement

- Option Agreement
  - Access to property for met towers, other testing
  - "Reserves" the ability to lease property for wind farm
- Wind Energy Lease Agreement –
  - Real property lease for developing a wind project site
  - Wind resource easement agreement
  - Typical provisions
    - Term
    - Purpose for which property may be used – developer and landowner
    - Noninterference covenant
    - Amount and method of payment - lump sum or periodic payments
    - Allocation of insurance costs
    - Default and cure
  - Payments may include signing bonus, pre-operation rental payments, installation fees and operating fees

Must learn physical, legal restriction on land use

- Title search
- Siting-related permits
  - Requirements are highly localized
  - Indiana is a "home rule" state
  - Permitting reflects the need for
    - Transmission lines or access roads
    - Facility size
    - Facility and equipment location
    - Land ownership and
    - Federal involvement
- County wind conversion system siting ordinances

Title Insurance and Survey Matters

- A typical wind energy project includes many parcels of land and often covers thousands of acres
- A survey showing easements and encumbrances that are either of record or apparent on the ground, improvements, setbacks, and physical features important to the siting, construction, and operation of the project (and the proposed site plan for pending projects) is advisable
- For title insurance:
  - Must review titles
  - Determine whether to cure defects in title
  - Negotiate title-related provisions
  - Maintain title insurance coverages over time

Indiana Utility Regulatory Commission

- IURC has jurisdiction over public utilities

  "Public utility" means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the production, transmission, delivery, or furnishing of heat, light, water, or power. Ind. Code §Sec 8-1-2-1(a)

- The developer must request the IURC to decline to exercise its jurisdiction
  - Not require the developer to obtain a certificate of public convenience and necessity to construct the wind farm under Ind. Code 8-1-8.5, the "Utility Powerplant Construction Act"
  - Not regulate, under Ind. Code 8-1-2, the "Public Service Commission Act," the developer's construction, ownership and operation of, and other activities in connection with, the wind farm
- Utility Powerplant Construction Act, §8-1-8.5
  - Not intended to apply to the construction by an independent power producer of a wind generating facility
  - Designed to protect Indiana's retail customers of regulated electric utilities from the costs associated with excessive generating capacity, while at the same time ensuring that the utilities serving those retail customers would be allowed to recover their prudent investments in new generating facilities

Indiana Utility Regulatory Commission

- Must find that the public interest requires the IURC to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both
- In determining whether the public interest will be served, §8-1-2.5-5(b) requires the IURC to consider the following:
  - (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the IURC unnecessary or wasteful
  - (2) Whether the IURC declining to exercise its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state
  - (3) Whether the IURC declining to exercise its jurisdiction will promote energy utility efficiency
  - (4) Whether the exercise of IURC jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment

Electrical Requirements

- Collector system
  - Routes the power generated to the switchyard/substation
- Substation
  - Steps up power to transmission voltage and physically interconnect the facility to the transmission grid
- Interconnection and transmission service
  - The ability to connect and inject power into the transmission grid

Transmission and Interconnection Issues

- **Generation Interconnection Agreements**
  - **Interconnection Facilities and Cost Allocation**
  - **Technical and Operational Issues**
    - Reactive power factors
    - Responsibility for electrical disturbances
    - Metering and testing of equipment
    - Exchange of operating data, and curtailment events
  - **Effect of FERC Order No. 661**
    - Must maintain a power factor standard only if the transmission provider's system impact study shows that the requirement is necessary to ensure safety or reliability
    - If applicable, must maintain power factor within the range of 95 percent leading to 95 percent lagging measured at the high-voltage side of the substation transformers
    - Must provide supervisory control and data acquisition capability, which improves system reliability by enabling two-way communication between the transmission provider and the wind farm
    - Must remain in service during system disturbances, *i.e.*, during a fault for up to nine cycles at a voltage as low as zero volts (measured on the high-voltage side of the generator step-up transformer

Transmission and Interconnection Issues

- **Transmission Service Agreements**
  - Interconnection by itself does not confer any delivery rights from the wind farm to any points of delivery
  - The project owner must obtain transmission service to wheel the output to the purchaser
    - Unless the project owner is able to sell the output at the point of interconnection
    - Unless, by contract, the purchaser has the transmission obligation
  - Request for transmission service must be evaluated by the transmission provider to determine
    - Whether transmission is available
    - Whether additional transmission facilities must be constructed

Reliability Standards

- Energy Policy Act of 2005 made system reliability standards that were historically voluntary, mandatory and subject to fines up to $1 million per day for noncompliance
- Apply to users, owners, and operators of the bulk electric system
- Project owners and operators may be required to register as an entity that must comply with the reliability standards
  - Regarding the wind generating facility
  - Because of long interconnection lines

Links to Helpful Information

The Law of Wind: A Guide to Business and Legal Issues
http://www.stoel.com/showarticle.aspx?Show=1185

Wind Energy Guide for County Commissioners
http://www.naco.org/Template.cfm?Section=New_Technical_Assistance&template=/ContentManagement/ContentDisplay.cfm&ContentID=21826

Harvest the Wind: A Wind Energy Handbook for Illinois
http://www.iira.org/pubsnew/publications/IVARDC_Reports_614.pdf

Farmers' Guide to Wind Energy: Legal Issues in Farming the Wind
http://www.flaginc.org/topics/pubs/index.php#FGWE

About Marline Breece

- Marline Breece graduated from Purdue with a Bachelor of Science degree in Atmospheric Science and received her juris doctorate from the Indiana University School of Law – Indianapolis.
- Marline practices in the field of wholesale power and transmission. She has represented public utilities and wind energy developers on matters related to the Midwest ISO, the interconnection of electric generating facilities to the transmission grid, and power supply agreements, including wind power purchase agreements